

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

S.T.Rev.No.344 of 2003

T.A.NO.292/2001 OF THE KERALA SALES TAX APPELLATE TRIBUNAL,
ADDL. BENCH, KOZHIKODE.
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REVISION PETITIONER/RESPONDENT:-

M/S. MALABAR RURAL INDUSTRIES,
MAYYIL, REPRESENTED BY THE MANAGING DIRECTOR,
B.M.ABOOBACKER.

BY ADV. SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

RESPONDENT/APPELLANT:-

THE STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD
ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:-

H.L.DATTU, C.J. & HARUN-UL-RASHID, J.

S.T.Rev. No. 344 of 2003

Dated this the 2nd day of August, 2007.

ORDER

H.L.Dattu, C.J.

The matter arises under the provisions of the Kerala General Sales Tax Act.

2. The assessee is the dealer registered under the Kerala General Sales Tax Act and Central Sales Tax Act. The business activity of the assessee is to collect sandal wood and produce sandal wood oil.

3. The assessee had filed nil return before the assessing authority. Initially, the same had been accepted. Thereafter, by invoking the provisions of Sec.19 of the Kerala General Sales Tax Act, the assessing authority has re-opened the completed assessment and has fixed the total and taxable turnover of the assessee under the provisions of the Kerala General Sales Tax Act at Rs.10,05,750/-.

4. The assessee has filed first appeal before the Deputy Commissioner (Appeals) in S.T.A. No.185 of 2001. The first appellate authority by its order dated 6-8-2001, has modified the total taxable turnover of the assessee and has computed the same as Rs.3,10,341.50.

5. Aggrieved by the quantification made by the first appellate authority, the State has carried the matter in appeal before the Sales Tax Appellate Tribunal in T.A.No.292 of 2001. The Tribunal has again made a guess work and even for that guess work, they did not have any material whatsoever. Accordingly, a modified order was passed by the appellate authority by enhancing the total taxable turnover at Rs.5 lakhs. Aggrieved by the said arbitrary estimation made by the Tribunal, the assessee is

before us in this revision.

6. The assessee has framed the following questions of law for our consideration and decision. They are as under.

i). Whether the order of the Sales Tax Appellate Tribunal is correct on law, facts and circumstances of the case?

ii). In the appellate order the 1st appellate authority had clearly given the break up of the actual closing stock for the year 1996-97. The appellate authority had found that the closing stock for Sap wood/Sandal wood was R.2,56,697/- and the closing stock for firewood was Rs.5,000/-. The figure is arrived at on the basis of the material evidence produced before the appellate authority. Thus whether the tribunal was correct in law and on facts in setting aside the estimate arrived at by the appellate authority of the Sapwood/Sandal wood consumed by the assessee?

lii). The Tribunal fixed the addition relating to firewood towards unaccounted purchase and probable omission and suppression at Rs.2,50,000/- setting aside the estimate of Rs.1 lakh made by the appellate authority. The Tribunal has failed to note that there was no inspection and no unaccounted sales were detected. The only case of the assessing authority was that there was manufacture of sandalwood oil for the year. This was a fact admitted by the assessee itself at the time of filing Form 21 CC. The case of the assessee itself was that though there was manufacture there was no sale. Nothing had been produced by the assessing authority to prove that there was unaccounted sales and omission and suppression of sales. The case of suppression is based on conjectures and surmises and not on evidence. The appellate authority had rightly deleted the addition made towards omission and suppression. Thus was the Tribunal right in law and on facts in estimating the addition relating to firewood towards unaccounted purchase and probable omission and suppression at Rs.2,50,000/-?

iv). The Tribunal failed to note that the assessment order

was completed by the assessing authority by ignoring the book of accounts produced by the petitioner. The appellate tribunal also estimated the turnover without reference to the book figures. The appellate tribunal merely adopted the figures quoted in the assessment order as correct without any independent verification. Under the circumstances of the case has not the tribunal erred in law making an estimate and directing the assessing authority to complete the assessment on the said basis?

v). Whether the order of the tribunal setting aside the order of the 1st appellate authority, by adopting incorrect and improper reasoning and ignoring relevant facts is sustainable in law and facts?

7. Before we consider the legal issues raised and canvassed by the learned counsel for the assessee, it will be useful to refer to the observations made by the Tribunal. The same is as under.

“As regards the addition made by the assessing authority relating to unaccounted purchase of firewood and a lump sum addition towards probable omission and suppression, considering the nature and volume of manufacturing activity dealt with by the assessee, we find that, the additions made by the assessing authority on this count is some what excessive. It is seen that, the 1st appellate authority fixed a lump sum amount of Rs.1 lakh alone towards cost of firewood estimated including liability under section 5A which according to us appears to be low. Considering all the above aspects of the matter, we find that, it is only fair and reasonable to fix the addition relating to firewood towards unaccounted purchase and probable omission and suppression at Rs.2,50,000/- (Rs. Two lakh and fifty thousand) instead of Rs.5 lakhs (Rs.5 lakhs) i.e. Rs.1,50,000/- + Rs.50,000/- +3 lakhs fixed by the assessing authority. So, this appeal has to be allowed in part and the Cross Objection fails.”

8. The learned counsel appearing for the assessee would contend that the

order passed by the Tribunal is arbitrary, improper, and illegal. Further, the learned counsel would contend that a guess work had been done by the assessing authority and that guess work had been modified by the first appellate authority again by adopting another guess work. The guess work of the first assessing authority and the appellate authority is again modified by the Tribunal by another guess work. Therefore, it is stated that such a thing is impermissible in law and contrary to the provisions of the Act.

9. The learned counsel for the revenue has justified the order which can never be justified.

10. Nil return had been filed by the assessee. The same has been accepted by the assessing authority. After invoking Section 19 of the Kerala General Sales Tax Act, a revised order had been passed by the assessing authority fixing the total taxable turnover at Rs.10,05,750/-. The order so passed by the assessing authority is modified by the first appellate authority and the appellate authority has fixed the total taxable turnover of the assessee at Rs.3,10,341.50.

11. The Tribunal in its order has observed that the total taxable turnover fixed by the authority while computing reassessment order is excessive. Having said so, without commenting on the order passed by the first appellate authority again attempts another guess work by modifying the order passed by the appellate authority fixing the total taxable turnover at Rs.5 lakhs. In our opinion, if the Tribunal was of the opinion that the first appellate authority was not justified in modifying the order passed by the assessing authority, it should have remanded the matter to the assessing authority for fresh computation of the tax liability. Instead of doing that, without there being any material before them, they should not have made another guess work to re-fix the total taxable

turnover of the assessee in a sum of Rs.5 lakhs. The order so passed by the Tribunal, in our opinion, is contrary to the statutory provision and also against the well established principles of law. In that view of the matter, the order passed by the Tribunal cannot be sustained. Accordingly, the following:

ORDER

1. The Revision Petition is allowed.
2. The order passed by the Tribunal is set aside.
3. We affirm the order passed by the first appellate authority.

Ordered accordingly.

(H.L.DATTU)
CHIEF JUSTICE

(HARUN-UL-RASHID)
JUDGE

MS/DK.